Center for Immigration Studies

Backgrounder

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Crime & the Illegal Alien

The Fallout from Crippled Immigration Enforcement

By Heather Mac Donald

Some of the most violent criminals at large today are illegal aliens. Yet in cities where crime from these lawbreakers is highest, the police cannot use the most obvious tool to apprehend them: their immigration status. In Los Angeles, for example, dozens of gang members from a ruthless Salvadoran prison gang have snuck back into town after having been deported for such crimes as murder, shootings, and drug trafficking. Police officers know who they are and know that their mere presence in the country is a felony. Yet should an LAPD officer arrest an illegal gangbanger for felonious reentry, it is the officer who will be treated as a criminal by his own department — for violating the LAPD's rule against enforcing immigration law.

The LAPD's ban on immigration enforcement is replicated in immigrant-heavy localities across the country — in New York, Chicago, Austin, San Diego, and Houston, for example. These so-called "sanctuary policies" generally prohibit a city's employees, including the police, from reporting immigration violations to federal authorities.

Sanctuary laws are a testament to the political power of immigrant lobbies. So powerful is this demographic clout that police officials shrink from even mentioning the illegal alien crime wave. "We can't even talk about it," says a frustrated LAPD captain. "People are afraid of a backlash from Hispanics." Another LAPD commander in a predominantly Hispanic, gang-infested district sighs: "I would get a firestorm of criticism if I talked about [enforcing the immigration law against illegals]." Neither captain would speak for attribution.

But however pernicious in themselves, sanctuary rules are a symptom of a much broader disease: the near total loss of control over immigration policy. Fifty years ago, immigration policy may have driven immigration numbers, but today the numbers drive policy. The non-stop increase of legal and illegal aliens is reshaping the language and the law to dissolve any distinction between legal and illegal immigration and, ultimately, the very idea of national borders.

It is a measure of how topsy-turvy the immigration environment has become that to ask police officials about the illegal crime problem feels like a gross social faux pas, something simply not done in polite company. And a police official, asked to violate this powerful taboo against discussing criminal aliens, will respond with a strangled response—sometimes, as in the case of a New York deputy commissioner with whom I spoke, disappearing from communication altogether. At the same time, millions of illegal aliens work, shop, travel, and commit crimes in plain view, utterly confident in their de facto immunity from the immigration law.

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I asked the Miami Police Department's spokesman, Detective Delrish Moss, about his employer's policy on illegal law-breakers. In September 2003, the force had arrested a Honduran visa violator for seven terrifying rapes. The previous year, Miami officers had had the suspect, Reynaldo Elias Rapalo, in custody for lewd and lascivious molestation, without checking his immigration status. Had they done so, they would have discovered his visa overstay, a deportable offense. "We have shied away from unnecessary involvement dealing with immigration issues," explains Detective Moss, choosing his words carefully, "because of our large immigration population."

Police commanders may not want to discuss, much less respond to, the illegal alien crisis, but its magnitude for law enforcement is startling. Some examples:

- In Los Angeles, 95 percent of all outstanding warrants for homicide (which total 1,200 to 1,500) target illegal aliens. Up to two-thirds of all fugitive felony warrants (17,000) are for illegal aliens.

- A confidential California Department of Justice study reported in 1995 that 60 percent of the bloody 18th Street Gang in California is illegal (estimated membership: 20,000); police officers say the proportion is undoubtedly much greater. The gang collaborates with the Mexican Mafia, the dominant force in California prisons, on complicated drug distribution schemes, extortion, and drive-by assassinations, and is responsible for an assault or robbery every day in Los Angeles County. The gang has dramatically expanded its numbers over the last two decades by recruiting recently arrived youngsters, a vast proportion illegal, from Central America and Mexico.

- The leadership of the Columbia Li'l Cycos gang, which uses murder and racketeering to control the drug market around L.A.'s MacArthur Park, was about 60 percent illegal in 2002, says former Assistant U.S. Attorney Luis Li. Frank "Pancho Villa" Martinez, a Mexican Mafia member and illegal alien, controlled the gang from prison, while serving time for felonious reentry following deportation.

Good luck finding any reference to such facts in official crime analysis. The LAPD and the Los Angeles City Attorney recently requested a judicial injunction against drug trafficking in Hollywood. The injunction targets the 18th Street Gang and, as the press release puts it, the "non-gang members" who sell drugs in Hollywood on behalf of the gang. Those "non-gang members" are virtually all illegal Mexicans, smuggled into the country by a trafficking ring organized by 18th Street bigs. The illegal Mexicans pay off their transportation debt to the gang by selling drugs; many soon realize how lucrative that line of work is and stay in the business.

The immigration status of these non-gang "Hollywood dealers," as the City Attorney calls them, is universally known among officers and gang prosecutors. But the gang injunction is silent on the matter. And if a Hollywood officer were to arrest an illegal dealer (known on the street as a "border brother") for his immigration status, or even notify Immigration and Customs Enforcement (ICE),* he would be severely disciplined for violation of Special Order 40, the city's sanctuary policy.

A Safe Haven

The ordinarily tough-as-nails former LAPD Chief Daryl Gates enacted Special Order 40 in 1979 — in response to the city's burgeoning population of illegal aliens — showing that even the most unapologetic law-and-order cop is no match for immigration demographics. The order prohibits officers from "initiating police action where the objective is to discover the alien status of a person." In practice, this means that the police may not even ask someone they have arrested about his immigration status until after criminal charges have been entered. They may not arrest someone for immigration violations. Officers certainly may not check a suspect's immigration status

* In 2003, the Immigration and Naturalization Service (INS) was broken up into three bureaus in the Department of Homeland Security (DHS): the Bureau of Immigration and Customs Enforcement (ICE); the Bureau of Customs and Border Protection (CBP); and U.S. Citizenship and Immigration Services (USCIS). This *Backgrounder* focuses on ICE, which is responsible for, among other things, enforcement of federal immigration laws in the interior of the United States.

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prior to arrest, nor may they notify ICE about an illegal alien picked up for minor violations. Only if an illegal alien has already been booked for a felony or multiple misdemeanors may they inquire into his status or report him to immigration authorities. The bottom line: a *cordon sanitaire* between local law enforcement and federal immigration authorities that creates a safe haven for illegal criminals.

Los Angeles' sanctuary law, and all others like it, contradicts everything that has been learned about public safety in the 1990s. A key policing discovery of the last decade was the "great chain of being" in criminal behavior. Pick up a law-violator for a "minor" crime, and you'll likely prevent a major crime. Enforcing graffiti and turnstile-jumping laws nabs you murderers and robbers. Enforcing known immigration violations, such as reentry following deportation, against known felons would be even more productive. LAPD officers recognize illegal deported gang members all the time — flashing gang signs at court hearings for rival gangbangers, hanging out on the corner, or casing a target. These illegal returnees are, simply by being in the country after deportation, committing a felony. "But if I see a deportee from the Mara Salvatrucha [Salvadoran prison] gang crossing the street, I know I can't touch him," laments a Los Angeles gang officer. Only if the deported felon has given the officer some other reason to stop him — such as an observed narcotics sale — can the officer accost him, and only for that non-immigration-related reason. The officer cannot arrest him for the immigration felony.

Such a policy is extraordinarily inefficient and puts the community at risk for as long as these vicious immigration-law-breakers remain free. The department's top brass brush off such concerns. No big deal if you're seeing deported gangbangers back on the streets, they say. Just put them under surveillance for "real" crimes and arrest them for those. But surveillance is very manpower-intensive. Where there is an immediate ground for arresting a violent felon, it is absurd to demand that the woefully understaffed LAPD ignore it.

The Impact of Sanctuary Policies

The stated reason for sanctuary policies is to encourage illegal alien crime victims and witnesses to cooperate with the police without fear of deportation and to encourage all illegal aliens to take advantage of city services like health care and education (to whose maintenance illegals contribute little). There has never been any empirical verification whether sanctuary laws actually increase cooperation with the police or other city agencies. And no one has ever suggested not enforcing drug laws, say, for fear of intimidating drug-using crime victims. But in any case, the official rationale for sanctuary rules could be honored by limiting police utilization of immigration laws to some subset of immigration violators: deported felons, say, or repeat criminal offenders whose immigration status is already known to the police.

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The real reason why cities prohibit their police officers and other employees from immigration reporting and enforcement is, like nearly everything else in immigration policy, the numbers. The population of illegal aliens and their legal brethren has grown so large that public officials are terrified of alienating them, even at the expense of annulling the law and tolerating avoidable violence. In 1996, a breathtaking *Los Angeles Times* expose on the 18th Street Gang, which included descriptions of innocent bystanders being murdered by laughing *cholos* [gang members], disclosed for the first time the rate of illegal alien membership in the gang. In response to the public outcry, the Los Angeles City Council ordered the police to reexamine Special Order 40. You would have thought they had suggested violating some shocking social taboo. A police commander warned the council: "This is going to open a significant, heated debate." City councilwoman Laura Chick put on a brave front: "We mustn't be afraid," she said firmly.

But immigrant pandering, of course, trumped public safety. Law-abiding residents of gang-infested neighborhoods may live in terror of the tattooed

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gangbangers dealing drugs, spraying graffiti, and shooting up rivals outside their homes, but such distress cannot compare to a politician's fear of offending Hispanics. At the start of the reexamination process, LAPD Deputy Chief John White had argued that allowing the department to work more closely with the INS would give officers another means to get gang members off the streets. Trying to build a case for homicide, say, against an illegal gang member is often futile, he explained, since witnesses fear deadly retaliation if they cooperate with the police. Enforcing an immigration violation would allow the cops to lock up the murderer right now, without putting a witness' life at risk.

Six months later Deputy Chief White had changed his tune: "Any broadening of the policy gets us into the immigration business. It's a federal law enforcement issue, not a local law enforcement issue." Interim Police Chief Bayan Lewis told the Los Angeles Police Commission: "It is not the time. It is not the day to look at Special Order 40."

Nor will it ever be the time to reexamine sanctuary policies, as long as immigration numbers continue to grow. After the brief window of opportunity in 1996 to strengthen the department's weapons against gangs, Los Angeles politicians have only grown more adamant in their defense of Special Order 40. After learning that police officers in the scandal-plagued Rampart Division had cooperated with the INS to try to remove murderous gangbangers from the community, local politicians threw a fit. They criticized district commanders for even allowing INS agents into their station houses. The offending officers were seriously disciplined by the department.

Immigration politics have had the same deleterious effect in New York. Former New York Mayor Rudolph Giuliani sued all the way up to the Supreme Court to defend the city's sanctuary policy against Congressional override. A 1996 federal law declared that cities could not prohibit their employees from cooperating with the INS. Oh yeah? said Giuliani; just watch me. He sued to declare the 1996 federal ban on sanctuary policies unconstitutional, and though he lost in court, he remained defiant to the end. On September 5, 2001, his hand-picked charter revision committee ruled that New York may still require that its employees keep immigration information confidential to preserve trust between immigrants and government. Six days later, several former visa-overstayers conducted the most devastating attack on the city and the country in history.

The 1996 federal ban on sanctuary laws was conveniently forgotten in New York until a gang of five Mexicans — four of them illegal — abducted and brutally raped a 42-year-old mother of two near some railroad tracks in Queens. Three of the illegal aliens had already been arrested numerous times by the NYPD for such crimes as assault, attempted robbery in the second degree, criminal trespass, illegal gun possession, and drug offenses. The department had never notified the INS.

Unfortunately, big city police chiefs are by now just as determined to defend sanctuary policies as the politicians who appoint them. They repudiate any interest in access to immigration law, even though doing so contradicts the universally respected theory of broken windows policing. (Sentiment is quite otherwise among the rank-and-file, who see daily the benefit that an immigration tool would bring.)

Overwhelmed by Numbers

But the same reality that drives cities to enact sanctuary policies — the growing numbers of legal and illegal immigrants — also cripples federal authorities' own ability to enforce the immigration law against criminals. Even if immigrant-saturated cities were to discard their sanctuary policies and start enforcing immigration violations where public safety demands it, it is hard to believe that ICE could handle the additional workload. Perennially starved for resources by Congress and the executive branch, ICE lacks the detention space to house the massive criminal alien population and the manpower to manage it. In fact, little the INS and its successors have done over the last 30

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years — above all its numerous displays of managerial incompetence — can be understood outside of the sheer overmatch between the agency and the size of the population it theoretically oversees.

In theory, ICE is supposed to find and deport all aliens who have entered the country illegally through stealth or fraudulent documents. (Illegal entry could in theory also be prosecuted as a misdemeanor by a U.S. Attorney prior to the alien's deportation, but such low-level prosecutions virtually never occur.) In fact, immigration authorities have not gone after mere status violators for years. The chronic shortage of manpower to oversee, and detention space to house, aliens as they await their deportation hearings (or, following an order of removal from an immigration judge, their actual deportation) has forced the agency to practice a constant triage. The bar for persuading managers to detain someone has risen ever higher.

Even in the days when the INS and the police could cooperate, the lack of detention space defeated their efforts. Former INS criminal investigator Mike Cutler worked with the NYPD catching Brooklyn drug dealers in the 1970s. "If you arrested someone who you wanted to detain, you'd go to your boss and start a bidding war," Cutler recalls. "He'd say: 'Whaddya got?' You'd say: 'My guy ran three blocks, threw a couple of punches, and had six pieces of ID.' The boss would turn to another agent: 'Next! Whaddid your guy do?' 'He ran 18 blocks, pushed over an old lady, and had a gun.'" But such one-upmanship was usually unavailing. "Without the jail space," explains Cutler, "it was like the Fish and Wildlife Service — you'd tag their ear and let them go."

Triage. Currently, the only types of aliens who run any risk of catching the attention of immigration authorities are, in ascending order of interest: illegal aliens who have been convicted of a crime; illegal aliens who have reentered the country following deportation without explicit approval of the attorney general (a felony punishable by up to two years in jail); illegal aliens who have been convicted of an "aggravated felony" — a term of art to refer to particularly egregious crimes; and illegal aliens who have been deported following conviction for an aggravated felony and who have reentered. (Aggravated felons become inadmissible for life, whereas mere deported aliens may apply for a visa after 10 years). A deported aggravated felon who has reentered may be sentenced for up to 20 years. The deported Mara Salvatrucha gang members that LAPD officers are seeing back on the streets fall into the latter category: they are aggravated felons who have reentered, and hence are punishable with 20 years in jail.

To other law enforcement agencies, triage by immigration authorities often looks like complete indifference to immigration violations. An illegal alien who has merely been arrested 14 times for robbery, say, without a conviction will draw only a yawn from an ICE district director. In practice, the only real sources of interest for immigration authorities are aggravated felons and returned deported aggravated felons.

"Run Letters." Lack of resources also derails the conclusion of the deportation process. If a judge has issued a final order of deportation (usually after years of litigation and appeals), ICE in theory can put the alien right on a bus or plane and take him across the border. It rarely has the manpower to do so, however. Second alternative: put the alien in detention pending actual removal. Again, no space and no staff in proportion to demand. In the early 1990s, for example, 15 INS officers were responsible for the deportation of approximately 85,000 aliens (not all of them criminals) in New York City. The agency's actual response to final orders of removal is what is known in the business as a "run letter" — a notice that immigration authorities send to a deportable alien requesting that he kindly show up in a month or two to be deported, when maybe the agency would have some officers and equipment to take custody of him. The results are foreordained: in 2001, 87 percent of deportable aliens who received "run letters" disappeared, a number that was even higher — 94 percent — if the alien was from a terror-sponsoring country.

John Mullaly, a former homicide detective with the NYPD, shakes his head remembering the INS's futile task in Manhattan's Washington Heights, where Mullaly estimates that 70 percent of the drug dealers and other criminals were illegal. "It's so overwhelming, you can't believe it," he explains. "The INS's workload was astronomical, beyond belief. Usually, they could do nothing." Were Mullaly to threaten a thug in custody that his next stop would

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be El Salvador unless he cooperated, the criminal just laughed, knowing that immigration authorities would never show up. The message sent to the drug lord and to the community could not be more clear: this is a culture that can't enforce its most basic law of entry. And if policing's broken windows theory is correct, the suspension of one set of rules breeds more universal contempt for the law.

ICE's capacity deficit gives an easy out to police departments when a known immigration violator commits a terrible crime. Testifying before Congress about the Queens rape by the illegal Mexicans, New York's criminal justice coordinator, John Feinblatt, peevishly defended the city's failure to notify the INS after the rapists' previous arrests on the ground that the agency wouldn't have responded anyway. "We have time and time again been unable to reach INS on the phone," Feinblatt told the House immigration subcommittee in February 2003. "When we reach them on the phone, they require that we write a letter. When we write a letter, they require that it be by a superior."

No Answer. However inadmirable his failure to take responsibility, Feinblatt nevertheless was describing a sad fact of life: Even when police agencies do contact immigration authorities about illegal aliens, they rarely get a response. Federal probation authorities in Brooklyn, who currently have 148 illegal alien felons on their active caseload, have given up trying to coordinate with ICE on deportation. "Our thinking is: these guys should be removed ASAP," says a probation supervisor. "Should the taxpayer be paying for our services to monitor, investigate, and provide services for individuals who are not citizens and should not be here at all?" But the supervisor's sense of urgency is not answered at the other end of the line. "You send the paperwork over to the INS, and you never hear back," explains the federal probation official. "We used to have a person assigned to us from the agency, who told us to not even bother sending over forms."

Immigration numbers stymied a program to ensure that criminal aliens were in fact deported after serving time in federal and state prisons. The Institutional Hearing Program, begun in 1988, was supposed to allow the INS to complete deportation hearings while a criminal was still in state or federal prison, so that upon his release, he could be immediately deported without taking up precious detention space. But the process immediately bogged down due to the magnitude of the problem — in 2000, for example, nearly 30 percent of federal prisoners were foreign-born. The agency couldn't find enough pro bono attorneys to represent criminal aliens (who have extensive due process rights in contesting deportation), and so would have to request continuance after continuance for the deportation hearings. Securing immigration judges was a difficulty as well. In 1997, the INS simply had no record of a whopping 36 percent of foreign-born inmates who had been released from federal and four state prisons without any review of their deportability. They included 1,198 aggravated felons, 80 of whom were rearrested for new crimes in short order.

Conflicting Missions

Resource-starvation is not the only reason immigration authorities fail to act against criminal aliens, however. The INS and its successor agencies are creatures of immigration politics, no less than immigrant-saturated cities and states. Until it was broken up, the agency had two conflicting missions: handing out immigration "benefits" such as permanent residency, citizenship, and work permits, on the one hand, and enforcing the immigration laws against border trespassers, illegal workers, counterfeiters, and felons, on the other. Local politicians are usually only concerned about the benefits mission: the more green cards issued in their districts, the happier the ethnic voters. So INS district directors were traditionally under enormous pressures to divert enforcement resources into benefit distribution and away from criminal or other investigations. In the late 1980s, for example, the INS refused to participate in an FBI task force against Haitian drug trafficking in Miami, for fear it would be criticized for engaging in "Haitian-bashing." In 1997, the Border Patrol announced it would no longer accompany Simi Valley, Calif., probation officers on home searches of illegal-alien-dominated gangs. The change in policy followed protests from Hispanic activists, after a highly-publicized raid netted nearly two dozen illegals. Crowed an attorney with the Ventura County Mexican-American Bar Association: The Border Patrol's reversal showed that it "can be at times responsive to the desires of all segments of a community."

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The disastrous Citizenship USA project of 1996 was a classic instance of the politically-driven sacrifice of enforcement responsibilities to benefit distribution. Citizenship applications from resident aliens had skyrocketed in the first half of the 1990s, due in part to the increasingly likely prospect of welfare reform. Most welfare reform proposals promised to disqualify non-citizens from the dole. In response, welfare-consuming immigrants were applying for citizenship in record numbers to preserve their eligibility for a monthly government check. The Clinton Administration sensed a potential political windfall from hundreds of thousands of newly-naturalized, permanently-welfare-qualified citizens, and ordered that the naturalization process be radically expedited. Due likely to relentless administration pressure, a 1996 audit showed that 99 percent of applications in New York contained processing errors while 90 percent contained errors in Los Angeles. As a result, tens of thousands of aliens with criminal records, including for murder and armed robbery, were naturalized.

Extended Stay

Immigration numbers also lie behind the daunting array of due process weapons that criminal aliens deploy to defeat their deportation. The American Immigration Lawyers Association (AILA) is a powerful force on Capitol Hill. It has won an elaborate set of trial rights for criminal aliens that savvy attorneys can use to keep them in the country indefinitely. Federal probation authorities in Brooklyn have two illegal aliens on their caseload — a Jordanian and an Egyptian with Saudi citizenship — who look "ready to blow up the Statue of Liberty," according to a probation official, but, at the time of this writing, the department couldn't get rid of them. The Jordanian had been caught fencing stolen government checks, such as Social Security checks and tax refunds; now he sells phone cards, which he uses himself to make untraceable calls. The Saudi's offense consisted in using a fraudulent Social Security number to get employment — a puzzlingly unnecessary scam, since he receives large sums of money from the Middle East, including from millionaire relatives. But intelligence links him to terrorism, so presumably he worked in order not to draw attention to himself. Ordinarily such a minor offense would not be prosecuted, but the government used whatever it had. Currently, the Saudi changes his cell phone every month.

Probation overseers desperately want to see the men deported, but the two Middle Easterners have hired lawyers and are staging lengthy deportation fights. "Due process allows you to stay for years without an adjudication," says a probation officer in frustration. "A regular immigration attorney can keep you in the country for three years, a high-priced one for ten." In the meantime, Brooklyn probation executives are watching the bridges.

No Fear of Enforcement. Finally, the overmatch between the immigration authorities and the numbers of illegal immigrants mars what should be the happy end of the criminal alien saga: their deportation. Even where the ICE successfully nabs and deports criminal aliens, the reality, says a former federal gang prosecutor, is that "they all come back. They can't make it in Mexico." The tens of thousands of illegal farm workers and restaurant dish-washers who overpower U.S border control every year carry in their wake hundreds or thousands of brutal assailants and terrorists who use the same smuggling industry as the "good" illegal aliens, and who benefit from the same irresistible odds: there's so many more of them than the Border Patrol.

The government's inability to keep out criminal aliens is part and parcel of its inability to patrol the border, period. The reasons are the same in both cases: numbers-driven politics and acute institutional incapacity. As a result, for decades, the INS had as much effect on the migration of millions of illegal aliens into the country as a can tied to the tail of a tiger. And the immigrants themselves, despite the boilerplate image in the press of hapless aliens living fearfully in the shadows, seem to regard immigration authorities with all the concern of an elephant for a flea.

Fear of immigration enforcement is not in ready evidence among the hundreds of illegal day laborers who hang out on Roosevelt Avenue in Queens, in front of money wire services, travel agencies, immigration attorney offices, and phone arcades, all catering to the local Hispanic population (as well as to drug dealers and terrorists). "There is no chance of getting caught," cheerfully explains Rafael, an Ecuadorian. Like the dozen Ecuadorians and

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Hiring practices in illegal-immigrant-saturated industries are a form of play-acting: Millions of illegal workers pretend to present valid documents, and thousands of employers pretend to believe them.

Mexicans on his particular corner, Rafael is hoping that an SUV seeking carpenters for a $100 a day will show up soon. "We don't worry, because we're not doing anything wrong. I know it's illegal, I need the papers, but here, nobody asks you for papers."

Even the newly fortified Mexican border, the only spot in the country where the government devotes significant resources to preventing illegal immigration, is regarded as a minor inconvenience by the day laborers. The odds, they realize, are overwhelmingly in their favor. Miguel, a reserved young Mexican with a 12-year-old son back in Mexico, crossed the border at Tijuana three years ago with 15 other people hidden in a truck. Border Patrol spotted the truck, but the outcome was predetermined. There were six officers to 16 illegals. Five were caught; the rest, including Miguel, got away. "But even if you're caught," he reflects, "they don't do nothing. You only get one night in jail."

In illegal border crossings, you get what you pay for, according to Miguel. "If you want your family to come safely, you pay money. If you want to go over the mountain, pay little." Miguel's wife was flying in from Los Angeles that very day, but he was blasé about it, not even knowing at which airport she was arriving. "Because I pay, I don't worry." (The bill was $2,200 this time.) If you try to shave on the fee, however, the coyotes will abandon you at the first problem. But hasn't security gotten tighter at the border recently? I ask him. "You can always find another way," he shrugs. "Everything's possible. *Para nosotros, es facil*."

Jobs Magnet

The only way to dampen illegal immigration and its attendant train of criminals and terrorists, short of revolution in the sending countries or an impregnably militarized border, is to remove the jobs magnet. As long as migrants believe they can easily get work, they will find ways to evade border controls. But the enforcement of laws against illegal labor is at the absolute bottom of the government's priorities. In 2001, only 124 agents in the entire country were trying to find and prosecute the hundreds of thousands of employers and millions of illegal aliens who violate the employment laws, the Associated Press reports. Interior enforcement generally, whose mandate includes not just the worksite, but also document fraud, alien smuggling, and criminals, has always been laughably underfunded compared to border operations, a situation that has been likened to a football team's placing its entire defense on the line of scrimmage. Currently less than 2 percent of immigration resources go for interior enforcement, and a mere 2,000 agents police the entire country beyond the borders — responsible for deporting some 10 million illegal aliens, eradicating thousands of counterfeiters, finding hundreds of thousands of scofflaw employers, and breaking up smuggling rings.

Lack of Legal Tools. But even were ICE to allocate resources to worksite investigations commensurate to the magnitude of the violations, not much would change, because its legal tools are so weak. That's no accident. Though it is against the law to hire illegal aliens, a coalition of libertarians, business lobbies, and left-wing advocates has consistently blocked the prerequisite to making that ban enforceable: a fraud-proof form of work authorization. Libertarians have erupted in hysteria at such proposals as a toll-free number that would allow employers to confirm Social Security numbers with the Social Security Administration, hurling out comparisons to concentration camp tattoos and godless Communism. Hispanics warn just as stridently that giving employers a means to verify work authorization would result in invidious discrimination against Hispanics — implicitly conceding the point that there are vast numbers of Hispanics working illegally.

The result? Hiring practices in illegal-immigrant-saturated industries are a form of play-acting: Millions of illegal workers pretend to present valid documents, and thousands of employers pretend to believe them. The law imposes no obligation on the employer to verify that a worker is actually qualified to work, and as long as the proffered documents are not patently phony, the employer will nearly always be insulated from liability merely by having eyeballed

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them. To find an employer guilty of violating the ban on hiring illegal aliens, immigration authorities must prove that he *knew* he was getting fake papers — an almost insurmountable burden. Meanwhile, the market for counterfeit documents has exploded. Fraud now pervades every aspect of the immigration system. In one month alone in 1998, the INS seized nearly two million counterfeit documents in Los Angeles, destined for workers, welfare seekers, criminals, and terrorists.

For illegal workers and employers, there is no downside to the employment charade. If immigration authorities ever do conduct an industry-wide investigation, which will at least net the illegal employees, if not the employers, local congressmen from the affected areas will almost certainly call it off. An INS inquiry into the Vidalia onion industry in Georgia in the late 1990s was not only aborted by Georgia's Washington delegation, it actually resulted in a local amnesty for the growers' illegal workforce. The downside to complying with the spirit of the employment law, on the other hand, is considerable. Ethnic advocacy groups are ready to picket employers who dismiss illegal workers, and employers understandably fear being undercut by less scrupulous competitors.

In 1999, the sheer numbers of illegal aliens again dictated immigration policy, rather than vice versa. The INS announced a "major shift" of strategy away from worksite enforcement to alien smuggling, alien absconders, and document fraud. The agency was merely rationalizing the real: An official told *The Washington Post* that the new priorities reflected an "inability within current resources to deal with the undocumented population in the U.S." And the revised strategy was little more than window-dressing: as long as the worksite remains wide open, alien smuggling, document fraud, and the attendant influx of criminal absconders will continue at record rates.

Blurring the Line

The continuing surge of illegal and legal migrants is changing American politics, demographics, and culture in ways that have yet to be grasped. But one of the most profound changes is already visible: the breakdown of the distinction between legal and illegal entry. Everywhere illegal aliens receive free public education and free medical care at taxpayer expense. In 13 states, they can get drivers licenses, according to Mexican officials. States everywhere are being pushed to grant in-state college tuition and scholarships to illegal aliens; many accede. One hundred banks, over 800 law enforcement agencies, and dozens of cities accept an identification card created by Mexico to credential illegal Mexican aliens in the United States. The Bush Administration has given its blessing to this "matricula consular" card, over the strenuous protest of the FBI. The massive security loopholes in the card, warns the FBI, make it a natural for money launderers, immigrant smugglers, and terrorists. Border authorities have already caught an Iranian man sneaking across the border with a Mexican matricula card, as well as an alien smuggler with seven cards, each with his picture and a different name.

But the rhetoric of contemporary immigration is as startling as its legal attributes. Hispanic advocates have successfully pushed the idea that to distinguish between a legal and illegal resident is an act of irrational bigotry, not a consequence of the law. "These are hate, wedge issues," cried Dolores Huerta, a regent of the University of California, as the California State Senate repealed a recently-enacted law giving drivers licenses to illegal aliens. In signing the ill-fated law, former California governor Gray Davis had explicitly renounced any distinction between illegal and legal immigrants. (An eruption of populist rage against the measure catapulted Arnold Schwarzenegger into the governor's mansion, but ethnic advocates are having the last laugh, since Schwarzenegger, having repealed the bill, has already promised a revised version.) Arrests of illegal aliens inside the border are now inevitably accompanied by protests, often led by the Mexican government, and those protests will inevitably feature signs calling for *No mas racismo*. It is the government that is constantly on the defensive now for enforcing the law, not those who break it.

The editor of Los Angeles's biggest Spanish-language daily, *La Opinion*, reflected recently that the Virgin Mary would never have imagined that her followers would find themselves discriminated against not for the color of their skin, but for their lack of documents. But it is not "discrimination" to experience the legal consequences of breaking the immigration laws; it is to encounter the inevitable results of one's freely-chosen actions.

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If the idea of giving voting rights to non-citizen majorities catches on, Americans could be faced with the ultimate absurdity of people outside the social compact making rules for those inside it.

Immigrant advocates now use the nebulous language of "human rights" to trump such trivia as citizenship laws. The apprehension of some illegal aliens in San Diego and San Juan Capistrano, Calif., last summer triggered a huge outcry, well-summed up by Christian Ramirez of the American Friends Service Committee: The arrests showed that "the current administration wants nothing to do with human rights," he said. "They are simply establishing a state of repression in Latino communities and other immigrant communities across this nation." In other words, no law enforcement agency has any legitimacy in enforcing the fundamental laws of entry.

"No Person is Illegal." The term "amnesty" is under attack, since it implicitly acknowledges the validity of borders even as it dissolves them. "Amnesty — there's an implication that somehow you did something wrong and you need to be forgiven," grouses Rep. Luis Gutierrez (D- Ill.). It's the border that is illegal, not the crossing of it without permission. "No person is illegal," Los Angeles Cardinal Roger Mahoney told parishioners on a day of protests in California against the repeal of the driver's license bill. That same day, a march for amnesty arrived at St. Patrick's Cathedral in New York, under the banner: "Messengers for the dignity of a people divided by a border" ("mensajeros por la dignidad de un pueblo dividido por la frontera"). New York's Monsignor Josu Iriondo greeted the marchers, and repeated their call for the elimination of the border between Mexico and the United States.

As with every contemporary protest movement, the push for open borders is replete with the language of entitlement and plaintive calls for respect and dignity. Illegal aliens and their advocates speak loudly about what they think the United States owes them, not vice versa. "I believe they have a right . . . to work, to drive their kids to school," said California Assemblywoman Sarah Reyes after the license bill repeal. The organizer of an economic boycott in California against the repeal, Nativo Lopez of the Mexican-American Political Association, says that the action is about "justice, dignity, and respect." An immigration agent says that people he's stopped in the past "got in your face about their rights, because our failure to enforce the law emboldens them."

Expect the push to dissolve any distinction between citizens, legal aliens, and illegal aliens to accelerate. Joaquin Avila, a UCLA Chicano Studies professor and former legal advisor to the Mexican-American Legal Defense and Educational Fund (MALDEF), argues that to deny non-citizens the vote, especially in the many California cities where they constitute the majority, is a form of apartheid. Voting laws allow an ethnic minority (presumably white Californians) to impose their will on the majority, he says.

Taken to its logical conclusion, this movement against the law of borders and citizenship points towards the dissolution of national sovereignty itself. Sen. Alan Simpson observed in the early 1980s that Americans "are fed up with efforts to make them feel that [they] do not have that fundamental right of any people — to decide who will join them and help form the future country in which they and their posterity will live."

Conclusion

The most striking political constant in the last four decades of immigration policy is the overwhelming popular desire to rein in immigration, and the utter pulverization of that desire by special interests. No poll has ever shown that Americans want ever-more open borders, yet that is exactly what the elites deliver year after year. If the idea of giving voting rights to non-citizen majorities catches on — and don't be surprised if it does — Americans could be faced with the ultimate absurdity of people outside the social compact making rules for those inside it.

But the push to annul the laws of immigration does not even help its purported beneficiaries. Sanctuary policies contribute to the terrorization of immigrant communities. By stripping the police of what on occasion may be their only immediate tool to remove a psychopathic gangster from the streets, sanctuary policies leave law-abiding immigrants defenseless against the social and financial devastation of crime and handicapped in the march up the

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economic ladder. Anyone who cares about their future success should want every possible law enforcement means deployed to protect them. And immigration optimists, who argue that assimilation into American ideals is proceeding just fine and dandily, should take another look: In many immigrant communities, assimilation into gangs seems to be outstripping assimilation into civic culture. Toddlers are being taught to flash gang signals and to hate the police, reports the *Los Angeles Times*. In New York City, "every high school has its Mexican gang," and most 12 to 14-year-olds have already joined, claims Ernesto Vega, an illegal 18-year-old Mexican who works at a New York association for Mexican empowerment. Such pathologies are only exacerbated when the first lesson of American law learned by immigrants is that Americans don't bother to enforce it. "Institutionalizing illegal immigration creates a mindset in people that anything goes in the U.S.," observes Patrick Ortega, the News and Public Affairs Director of "Radio Nueva Vida" in Southern California. "It creates a new subculture, with a sequelae of social ills."

Taking immigration law seriously may make a start in combating these worrisome trends. The police should be given the option of reporting and acting on immigration violations, where doing so would contribute to public safety. The decision about when to use immigration rules will be a matter of discretion, but discretion is at the heart of all wise policing. The CLEAR Act, now before Congress, would help by clarifying the authority of local law enforcement to cooperate with immigration authorities. The police should have access to federal databases of immigration violators, an idea that the administration is slowly acting upon, against great opposition from the usual suspects.

And then the successor agencies of the INS should be given the resources they need. More detention space should be built, or contracted through private providers, so that deportable aliens are not released back to the streets. The missing link in workforce law — a fraud-proof work ID — must be created, and then employers must be held responsible for demanding it.

Advocates for amnesty argue that it is the only solution to the illegal alien crisis, because enforcement clearly has not worked. They are wrong in their key assumption: Enforcement has never been tried. Amnesty, however, *has* been tried — in both an industrial-strength version in 1986, and in more limited doses ever since — and it was a clear failure. Before we proceed again to the ultimate suspension of the nation's self-definition, it is long past time to make immigration law a reality, not a charade.

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Backgrounder

Crime & the Illegal Alien

The Fallout from Crippled Immigration Enforcement

By Heather Mac Donald

Some of the most violent criminals at large today are illegal aliens. Yet in cities where crime from these lawbreakers is highest, the police cannot use the most obvious tool to apprehend them: their immigration status. These so-called "sanctuary policies" generally prohibit a city's employees, including the police, from reporting immigration violations to federal authorities and are a testament to the political power of immigrant lobbies. So powerful is this demographic clout that police officials shrink from even mentioning the illegal alien crime wave. It is a measure of how topsy-turvy the immigration environment has become that to ask police officials about the illegal crime problem feels like a gross social faux pas, something simply not done in polite company.

Fifty years ago, immigration policy may have driven immigration numbers, but today the numbers drive policy. The non-stop increase of legal and illegal aliens is reshaping the language and the law to dissolve any distinction between legal and illegal immigration and, ultimately, the very idea of national borders.

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